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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 MARIEL SUMNER,
10

11 Plaintiff,
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13 v.
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15 SACRED HEART MEDICAL CENTER,
16 non-profit Washington public
17 benefit corp.,
18

19 Defendant.
20

21 NO. CV-04-0285-EFS
22

23 **ORDER GRANTING DEFENDANT'S
24 MOTION FOR SUMMARY JUDGMENT,
25 DENYING AS MOOT PLAINTIFF'S
26 MOTIONS, ENTERING JUDGMENT,
AND CLOSING FILE**

27
28 A hearing was held in the above-captioned case on September 28,
29 2005. The Defendant was represented by Michael Love, and Plaintiffs were
30 represented by Patrick Kirby and Nicholas Kovarik. Before the Court were
31 Defendant's Motion for Summary Judgment, (Ct. Rec. 16), Plaintiff's
32 Motion for Summary Judgment Re: Ms. Sumner's ADA Disability, (Ct. Rec.
33 29), Plaintiff's Motion to Strike, (Ct. Rec. 33), and Plaintiff's Motion
34 to Exclude the Expert Testimony of Dr. Joseph Moisan, (Ct. Rec. 34).
35 After reviewing the submitted materials, oral argument, and relevant case
36 and statutory law, the Court was fully informed. This Order serves to
37 supplement and memorialize the Court's oral ruling granting the
38 Defendant's Motion for Summary Judgment and denying as moot Plaintiff's
39 motions.

A. Joint Undisputed Facts¹

Plaintiff Mariel Sumner was formerly employed as an Assistant Nurse Manager on the 7 North unit at Sacred Heart Medical Center ("SHMC") in Spokane, Washington. Ms. Sumner took and was given a medical leave of absence from her duties at SHMC from July 7, 2003, through September 16, 2003, due to a hysterectomy.

On September 16, 2003, Ms. Sumner met with Virginia "Pinkie" Hutton at SHMC, after returning from her medical leave of absence with a note from her doctor releasing her to work with a 30-pound lifting restriction. The 30-pound lifting restriction is permanent. The Assistant Nurse Manager Description lists a physical requirement of occasionally lifting up to 50 pounds. Ms. Hutton informed Ms. Sumner, because of her lifting restriction, she was not qualified to work as an Assistant Nurse Manager. Ms. Hutton directed Ms. Sumner to Bob Hebner, SHMC's Nurse Recruiter, to inquire as to whether SHMC had any other openings that Ms. Sumner was qualified for. Ms. Sumner met with Mr. Hebner on September 16, 2003.

18 SHMC posted openings for a Neonatal ICU Registered Nurse on April
19 6, 2004, and September 24, 2004, and for a Nurse Case Manager on January
20 5, 2004, March 25, 2004, August 31, 2004, and February 11, 2005. Ms.
21 Sumner did not contact SHMC about or apply for any of the above openings.
22 SHMC has not contacted Ms. Sumner about a position or offered her any
23 nursing or non-nursing jobs at SHMC since September 16, 2003.

¹ The parties submitted a Joint Statement of Uncontroverted Facts on August 8, 2005, (Ct. Rec. 57).

1 Ms. Sumner does not currently have a mental or physical impairment
2 that substantially limits a major life activity. Ms. Sumner has been
3 working as an infusion nurse at Rockwood Clinic since October of 2003.
4 She has not sought treatment for any physical or mental symptoms since
5 September 16, 2003.

6 Ms. Sumner's Charge of Discrimination against SHMC was received by
7 the Washington State Human Rights Commission ("WSHRC") on June 16, 2004.
8 The Equal Employment Opportunity Commission ("EEOC") received the signed
9 charge from WSHRC on July 7, 2004. Ms. Sumner filed this lawsuit on
10 August 9, 2004, (Ct. Rec. 1), alleging that based upon her 30-pound
11 lifting restriction, SHMC believed she was disabled in the major life
12 activity of working and, as a result, believed she was incapable of
13 performing any tasks in the nursing field and failed to offer alternative
14 work.

15 **B. Summary Judgment Standard**

16 A party is entitled to summary judgment where the documentary
17 evidence produced by the parties permits only one conclusion. *Anderson*
18 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). The party seeking
19 summary judgment must show that there is an absence of disputed issues
20 of material fact and that he is entitled to judgment as a matter of law.
21 FED. R. CIV. PROC. 56(c). In other words, the moving party has the burden
22 of showing that no reasonable trier of fact could find other than for the
23 moving party. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). "A
24 material issue of fact is one that affects the outcome of the litigation
25 and requires a trial to resolve the parties' differing versions of the
truth." *S.E.C. v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

1 The court is to view the facts and draw inferences in the manner most
 2 favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Chaffin*
 3 *v. United States*, 176 F.3d 1208, 1213 (9th Cir. 1999).

4 A burden is also on the party opposing summary judgment to provide
 5 sufficient evidence supporting his claims to establish a genuine issue
 6 of material fact for trial. *Anderson*, 477 U.S. at 252; *Chaffin*, 186 F.3d
 7 at 1213. “[A] mere ‘scintilla’ of evidence will be insufficient to
 8 defeat a properly supported motion for summary judgment; instead, the
 9 non[-]moving party must introduce some ‘significant probative evidence
 10 tending to support the complaint.’” *Fazio v. City & County of San*
 11 *Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting *Anderson*, 477
 12 U.S. at 249, 252).

13 **C. Failure to Exhaust Administrative Remedies**

14 SHMC seeks to dismiss Ms. Sumner’s claim for failing to exhaust her
 15 administrative remedies by timely filing her discrimination claim with
 16 the EEOC. Ms. Sumner argues an extended federal filing period is
 17 applicable to her situation, submitting the filing period was extended
 18 from 180 days to 300 days. The Court finds Ms. Sumner failed to timely
 19 file her claim because the applicable filing period was 180 days given
 20 that Washington’s Human Rights Commission does not have jurisdiction over
 21 SHMC.

22 The Americans With Disabilities Act (“ADA”), 42 U.S.C. § 12101-
 23 12203, contains the identical requirements for filing an administrative
 24 charge of discrimination with the EEOC as the Civil Rights Act of 1964
 25 (“Title VII”), as amended, 42 U.S.C. § 2000e. 42 U.S.C. § 2000e-5;
 26 *Bonilla v. Muebles J.J. Alvarez, Inc.*, 194 F.3d 275, 277 (1st Cir. 1999).

1 Accordingly, for a federal court to have subject matter jurisdiction over
 2 ADA claims, the plaintiff must have exhausted all administrative
 3 remedies. *Bonilla*, 194 F.3d at 277; *Vasquez v. City of Los Angeles*, 349
 4 F.3d 634, 644 (9th Cir. 2003). A plaintiff exhausts her administrative
 5 remedies by timely filing her charge with the EEOC or the appropriate
 6 state agency. 42 U.S.C. § 2000e-5(b). The general rule is a plaintiff
 7 must file a charge with the EEOC within 180 days. *Id.* § 12117(a).
 8 However, federal law states the time period for filing may be extended
 9 from 180 days to 300 days in jurisdictions that have a state agency with
 10 subject matter jurisdiction over the charge. *Id.*; 29 C.F.R. §
 11 1601.13(a)(4)(ii)(A). The statute specifically states:

12 A charge under this section shall be filed *within one hundred*
 13 *and eighty days after the alleged unlawful employment practice*
 14 *occurred and notice of the charge (including the date, place*
 15 *and circumstances of the alleged unlawful employment practice)*
 16 *shall be served upon the person against whom such charge is*
 17 *made within ten days thereafter, except that in a case of an*
 18 *unlawful employment practice with respect to which the person*
 19 *aggrieved has initially instituted proceedings with a State or*
 20 *local agency with authority to grant or seek relief from such*
 21 *practice or to institute criminal proceedings with respect*
 22 *thereto upon receiving notice thereof, such charge shall be*
 23 *filed by or on behalf of the person aggrieved *within three**
 24 **hundred days after the alleged unlawful employment practice**
 25 **occurred, or within thirty days after receiving notice that the**
 26 **State or local agency has terminated the proceedings under the**
State or local law, whichever is earlier, and a copy of such
charge shall be filed by the Commission with the State or local
agency.

21 42 U.S.C. § 12117(a) (emphasis added).

22 Plaintiff argues, citing to the Washington Workshare Agreement and
 23 *EEOC v. Commercial Office Products Co.*, 486 U.S. 107 (1988), because
 24 Washington has such an agency, her claim is timely. Plaintiff is correct
 25 that in Washington charges for employment discrimination may be reviewed
 26

1 by the WSHRC. R.C.W. § 49.60.010; (Ct. Rec. 44-3: WorkShare
 2 Agreement). However, the parties do not dispute that WSHRC does not have
 3 jurisdiction over SHMC, a non-profit religious organization.² R.C.W. §
 4 49.60.040(3). Accordingly, WSHRC does not have jurisdiction over claims
 5 involving SHMC. Therefore, this extended filing period is not applicable
 6 to Plaintiff's claim. Rather, 29 C.F.R. § 1601.13(a)(2) is applicable:

7 A jurisdiction having a FEP agency without subject matter
 8 jurisdiction over a charge (e.g., an agency which does not cover sex discrimination or does not cover nonprofit
 9 organizations) is equivalent to a jurisdiction having no FEP
 10 agency. Charges over which a FEP agency has no subject matter
 11 jurisdiction are filed with the Commission upon receipt and are
 12 timely filed if received by the Commission within 180 days from
 13 the date of the alleged violation.

14 29 C.F.R. § 1601.13(a)(2).

15 Plaintiff contends this rule does not apply, pointing to the
 16 following Workshare Agreement provisions:

17 In order to facilitate the assertion of employment rights, the
 18 EEEC and the [WSHRC] each designate the other as its agent for
 19 the purpose of receiving and drafting charges . . .
 20 . . .

21 ² R.C.W. § 49.60.040(3) defines "employer" as including: "any
 22 person acting in the interest of any employer, directly or indirectly,
 23 who employs eight or more persons, and does not include any religious or
 24 sectarian organization not organized for private profit." SHMC provided
 25 an affidavit from Roger Chase, its Vice President/General Counsel and
 26 Assistant Secretary for Providence Health Care d/b/a SHMC, who states
 that SHMC is a separate Washington nonprofit corporation exempt from
 federal income taxes under § 501(c)(3) of the Internal Revenue Code. (Ct.
 Rec. 50-1 at 1 & 2.)

1 The [WSHRC] shall take all charges alleging a violation of .
2 . . . the ADA where both [the WSHRC] and EEOC have mutual
3 jurisdiction, or where EEOC only has jurisdiction as long as
4 the allegations meet the minimum requirements of those Acts,
5 and for charges specified in Section III.A.1. below, or where
6 EEOC only has jurisdiction refer them to the EEOC for initial
7 processing.

8 (Ct. Rec. 44-4 at 8 & 9: Kirby Aff., Exhibit A at 28 & 29.) The Court
9 does not agree with Plaintiff's position that the Workshare Agreement
10 provides the WSHRC with jurisdiction to hear Plaintiff's claims, as these
11 cited provisions merely allow the WSHRC to act as an agent for the EEOC.
12 In fact, the Workshare Agreement specifically states, "[t]his delegation
13 of authority to receive charges does not include the right of one Agency
14 to determine the jurisdiction of the other Agency over a charge," as well
15 as "the EEOC will initially process the following charges: . . . [a]ll
16 disability-based charges which may not be resolved by the FEPA in a
17 manner consistent with the ADA." (Ct. Rec. 44-4 at 9 & 10.) Accordingly,
18 the Workshare Agreement recognizes there are disability-based claims
19 which the WSHRC cannot resolve. For these reasons, although the
20 Workshare Agreement allows the WSHRC to operate as an agent of the EEOC,
21 it does not provide jurisdiction over charges against a non-profit
22 religious organization. Given that SHMC is a private religious
23 organization, the WSHRC did not have authority over Plaintiff's claims.
24 It could accept service on behalf of the EEOC, but because the WSHRC did
25 not have authority over Ms. Sumner's claims, the 180-day filing
26 requirement applied. Accordingly, her claims are untimely and this Court
 does not have jurisdiction.

1 The Court finds this holding consistent with *EEOC v Commercial*
2 *Office Products Co.*, 486 U.S. 107, 113 (1988). In *Commercial Office*
3 *Products Co.*, the agency had jurisdiction over the claim and, therefore,
4 the extended federal filing period applied. *Id.* at 123. However, in
5 this case, the WSHRC did not have jurisdiction over Ms. Sumner's claim
6 and, as a result, the 180-day-time limit applies. It is important to
7 note *Commercial Office Products Co.* does state the 300-day-filing period
8 is merely an exception to the rule:

9 As a general rule, a complainant must file a discrimination
10 charge with the EEOC within 180 days of the occurrence of the
11 alleged unlawful employment practice. If a complainant
12 initially institutes proceedings with a state or local agency
with authority to grant or seek relief from the practice charged, the time limit for filing with the EEOC is extended
to 300 days.

13 *Id.* at 110 (citations omitted) (emphasis added).

14 Accordingly, the analysis in *Commercial Office Products Co.* does not
15 alter the Court's finding that the 300-day federal filing period is not
16 applicable to Ms. Sumner's claim given that SHMC is excluded from the
17 WSHRC's jurisdiction. As a result, Ms. Sumner's administrative claim is
18 untimely. Ms. Sumner's employment with SHMC was terminated on September
19 16, 2003. She filed her complaint with WSHRC on June 16, 2004, which was
20 274 days after the alleged violation. (Ct. Rec. 19-7 at 2.) The EEOC
21 received Ms. Sumner's signed EEOC Affidavit and charge from the WSHRC on
22 July 7, 2004, which was 295 days following Ms. Sumner's employment
23 termination. Because she failed to file her charge with either the WSHRC
24 or the EEOC until more than 180 days after the violation, she failed to

1 exhaust her administrative remedies and, as a result, the Defendant's
 2 motion for summary judgment is granted.³

3 **D. Remaining Issues**

4 Because the Court does not have jurisdiction, it cannot address the
 5 merits of Plaintiff's Americans with Disabilities Act claim.
 6 Furthermore, the Court is unable to exercise supplemental jurisdiction
 7 over Plaintiff's state law claims. See 28 U.S.C. § 1367(a); *Kelly v.*
 8 *Fleetwood Enters., Inc.*, 377 F.3d 1034, 1040 (9th Cir. 2004). Therefore,
 9 the Court denies as moot Plaintiff's motions.

10 For the above stated reasons, **IT IS HEREBY ORDERED:**

11 1. Defendant's Motion for Summary Judgment, (**Ct. Rec. 16**), is
 12 **GRANTED. Judgment is to be entered in Defendant's favor.**

13 2. Plaintiff's Motion for Summary Judgment Re: Ms. Sumner's ADA
 14 Disability, (**Ct. Rec. 29**), Plaintiff's Motion to Strike, (**Ct. Rec. 33**),
 15 and Plaintiff's Motion to Exclude the Expert Testimony of Dr. Joseph
 16 Moisan, (**Ct. Rec. 34**), are **DENIED AS MOOT**.

17
 18 ³ Although the application of the 180-day timeline appears strict
 19 and unfair, the Supreme Court stated in *Mohasco Corp.*, 447 U.S. at 835,
 20 that:

21 [t]he unfairness argument is based on the assumption that a lay
 22 person reading the statute would assume that he had 300 days
 23 in which to file his first complaint with either a state or
 24 federal agency. We find no merit in this argument. We believe
 25 that a lay person would be more apt to regard the general
 obligation of filing within 180 days as the standard diligence
 he must satisfy, and that one who carefully read the entire
 section would understand it to mean exactly what it says.

26 *Id.* at 825.

IT IS SO ORDERED. The District Court Executive is directed to

- (A) Enter this Order; and
- (B) Prepare and enter **JUDGMENT** in favor of Defendant; and
- (C) Provide copies of the Order and Judgment to the parties; and
- (D) **CLOSE THIS FILE.**

DATED this 30th day of September, 2005.

s/Edward F. Shea
EDWARD F. SHEA
United States District Judge

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